

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CASAS, BENJAMIN & WHITE, LLC

Plaintiff,

v.

Docket No: 1:04-CV-12333-MEL

THE POINTE GROUP, INC., a
Massachusetts corporation d/b/a The Pointe
Group Healthcare and Senior Living;
GERALD S. FREID; BARRY FREID; KEY
CORPORATE CAPITAL, INC.,

Defendants.

**DEFENDANT KEY CORPORATE CAPITAL, INC.'S MOTION
TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant Key Corporate Capital, Inc. ("KeyBank") respectfully moves, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiff's Complaint on the grounds that it fails to state any cause of action as a matter of law against Defendant KeyBank. In support of this Motion, KeyBank states as follows:

Plaintiff's Complaint should be dismissed for the reasons stated in Defendant's Memorandum of Law in Support of Its Motion to Dismiss and Appendix submitted in support thereof. For the Court's convenience, Defendant has included in the Appendix copies of all unreported decisions or out of jurisdiction decisions relied upon by KeyBank in its Memorandum.

WHEREFORE Key Corporate Capital, Inc. requests that the Court:

- (a) Dismiss all counts against Key Corporate Capital, Inc.
- (b) Award attorneys fees and costs for this motion; and
- (c) Grant such other relief as the Court deems just and equitable.

Dated: December 10, 2004

Respectfully submitted,

KEY CORPORATE CAPITAL, INC.

By its attorneys

NIXON PEABODY LLP

/s/W. Scott O'Connell

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I hereby certify that on this 10th day of December, 2004, a copy of the foregoing Motion to Dismiss, Supporting Memorandum, and Appendix were filed electronically. Notice of this filing will be sent to all parties in this case by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Courtney Worcester

One of the Attorneys for Defendants

RULE 7.1 CERTIFICATION

I Courtney Worcester hereby certify that I conferred with counsel for Plaintiff in an attempt to narrow the issues in this Motion to no avail.